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Supreme Court, U.S.
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No. 04-333

IN THE

Supreme Court of the United States

JAMES C. LOWE,

Petitioner,

v.

WAL-MART STORES, INC. ASSOCIATES HEALTH AND WELFARE PLAN, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a benefit plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA") can require a plan participant to execute a reimbursement and subrogation form?

2. Is there a conflict among the Circuit Courts of Appeal or an overriding issue regarding the constitutionality of ERISA?

STATEMENT PURSUANT TO RULE 29.6

Respondent, Wal-Mart Stores, Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
STATEMENT PURSUANT TO RULE 29.6	ii
TABLE OF CONTENTS	iii
TABLE OF CITED AUTHORITIES	v
MISSTATEMENTS OF FACT OR LAW IN THE PETITION	1
COUNTER-STATEMENT OF THE CASE	1
1. Mr. Lowe Never Filed a Request For Plan Documents	2
2. Lowe's Lawsuits in State Court Revealed His Receipt of a Tort Settlement and His Motivation For Refusing to Sign the Reimbursement Form	2
3. The Federal Court Action Was Stayed Pending the Outcome of the State Court Actions	3
4. The State Court Granted Summary Judgment to the Plan	3
5. The Federal District Court Independently Granted Summary Judgment to the Plan, Which Was Affirmed by the Eleventh Circuit Court of Appeals	4

Contents

Page

REASONS FOR DENYING THE PETITION 4

1. There Is No Conflict Among The Circuit Courts Of Appeal Regarding Whether a Benefit Plan Can Require A Plan Participant to Execute a Reimbursement And Subrogation Form 4

2. There Is No Conflict Between the Seventh Circuit Court of Appeals And The Eleventh Circuit Court of Appeal's Decision In This Matter 6

3. There Is No Compelling Reason For Supreme Court Review 7

CONCLUSION 9

TABLE OF CITED AUTHORITIES

	Page
Cases:	
Boggs v. Boggs, 520 U.S. 833, 117 S. Ct. 1754 (1997)	8
Cagle v. Bruner, 112 F.3d 1510 (11th Cir. 1997)	5, 6
Gries v. Wal-Mart Stores, Inc., D.C. Docket No. 95-1130-Civ-ORL-18 (M.D. Fla. 1997), *aff'd.*, 162 F.3d 1177 (11th Cir. 1998)	5, 6
Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 111 S. Ct. 478 (1990)	8
Pilot Life v. Dedeaux, 481 U.S. 41 (1987)	8
Wal-Mart v. Wells, 24 EBC 1673 (7th Cir. 2000)	6, 7
Statutes:	
29 U.S.C. § 1003(a)	8
29 U.S.C. § 1144(a)	8

For the following reasons, Respondents Wal-Mart Stores, Inc. Associates Health and Welfare Plan, Wal-Mart Stores, Inc., David D. Glass, John B. Menzer, Paul R. Carters, Joseph S. Hardin, Jr., as Plan Trustees, and The Administrative Committee, as Plan Administrator ("The Plan") respectfully submit that the Petition for a Writ of Certiorari filed by Petitioner James C. Lowe ("Lowe") should be denied.

MISSTATEMENTS OF FACT OR LAW IN THE PETITION

Lowe's Petition references an arbitration award that occurred in a state court action. Lowe claims that the Plan was subject to that award. Pet. 37a - 39a. Lowe plainly misrepresents to this Court the status of that arbitration award, as he also did to the Eleventh Circuit Court of Appeals. The December 11, 2002, Order referenced in Lowe's Petition at 37a-39a was clarified and amended by the state court to specify that it did not apply to the Respondents. Lowe's Petition contains numerous other misstatements of fact and law. Respondents address below the key misstatements as they relate to the issues before this Court.

COUNTER-STATEMENT OF THE CASE

On June 9, 1998, Lowe filed an action in the United States District Court for the Northern District of Georgia pursuant to ERISA alleging that he was wrongfully denied benefits and documents in violation of ERISA. The Plan filed an Answer denying his allegations.

Lowe was eligible for coverage under the Plan by virtue of the employment of his spouse, Belinda Lowe, at Wal-Mart.

Lowe filed claims for benefits with the Plan related to injuries he sustained in an accident in 1994. The Plan denied Lowe's claims because he refused to comply with reasonable administrative prerequisites of the Plan; specifically, he refused to sign the Plan's reimbursement and subrogation form. Execution of this document is required by the express terms of the Plan. Accordingly, the Plan determined that Lowe was ineligible for Plan benefits and his claims for benefits were appropriately denied.

1. Mr. Lowe Never Filed a Request For Plan Documents

Subsequently, Lowe's wife submitted three written requests for information to the Plan. The Plan timely and fully responded to each of her requests for information. Lowe's wife is not a party in this action. To date, Lowe has not submitted a written request for information to the Plan.

2. Lowe's Lawsuits in State Court Revealed His Receipt of a Tort Settlement and His Motivation For Refusing to Sign the Reimbursement Form

When this federal case was filed, Lowe had already joined Wal-Mart and the Plan as third-party defendants in two collection actions that were pending against him in state court.[1] Lowe asserted similar claims for benefits in the state actions. During those lawsuits, the Plan discovered that Mr. Lowe had received a substantial tort settlement relating

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1. *Columbia West Paces Ferry Medical Ctr. v. James C. Lowe v. Wal-Mart Stores, Inc., d/b/a Wal-Mart Health Care*, Case No. 96-VA-0113449-JJ; and *Center Neurology, P.C. v. James C. Lowe v. Wal-Mart Stores, Inc. Associates Health and Welfare Plan*, Case No. 97-VS-0124325, respectively.

to the injuries for which he also claimed benefits from the Plan. Lowe failed to inform the Plan of his recovery as required by the express terms of the Plan.

3. The Federal Court Action Was Stayed Pending the Outcome of the State Court Actions

On December 21, 1998, the Plan filed a Motion for Summary Judgment on all of Lowe's claims. On May 24, 1999, the matter came before the District Court on its own motion to consider whether the pending action should be stayed pending resolution of the proceedings in the State Court of Fulton County and the Superior Court of Fulton County. The Honorable Orinda D. Evans entered an Order on May 24, 1999, staying the District Court matter pending resolution of the cases in the State and Superior Courts of Fulton County. The Order provided the parties with the right to refile dispositive motions upon resolution of the cases in the State and Superior Courts of Fulton County.

4. The State Court Granted Summary Judgment to the Plan

On November 29, 2001, the Honorable Wendy L. Shoob, Superior Court Judge for Superior Court, Atlanta Judicial Circuit, granted summary judgment to Wal-Mart Stores, Inc. Associates Health and Welfare Plan on Lowe's claims.

5. The Federal District Court Independently Granted Summary Judgment to the Plan, Which Was Affirmed by the Eleventh Circuit Court of Appeals

On January 3, 2002, the Plan resubmitted and refiled a Motion for Summary Judgment. On June 24, 2002, the District Court entered an order granting summary judgment in full to the Plan and denying Lowe's pending motions. Lowe filed a Motion to Alter or Amend Judgment and Motion for Relief of Judgment. On March 4, 2003, the Court entered an Order denying the motion. Lowe filed various motions regarding the judgment. On May 12, 2003, the District Court denied each of Lowe's motions. Lowe filed a Notice of Appeal to the Eleventh Circuit Court of Appeals on May 20, 2003. Both sides submitted briefs to the Eleventh Circuit Court of Appeals. On January 8, 2004, the Eleventh Circuit affirmed the District Court's decision. Lowe filed a Petition for Rehearing and for Rehearing en Banc, which was denied April 9, 2004.

REASONS FOR DENYING THE PETITION

1. There Is No Conflict Among The Circuit Courts Of Appeal Regarding Whether a Benefit Plan Can Require A Plan Participant to Execute a Reimbursement And Subrogation Form

The predominant theme in Lowe's petition is that he believes that the Plan could not require him to execute a reimbursement and subrogation form prior to receiving benefits, even though it is required by the express and unambiguous terms of the Plan. There is no conflict, however, among the Circuit Courts of Appeal regarding whether a benefit plan can make such a requirement and deny benefits

if a participant fails to execute the forms. The Eleventh Circuit Court of Appeals has expressly held that it was not arbitrary and capricious for an administrator to require participants to sign a subrogation agreement before paying benefits, instead of later. *Cagle v. Bruner*, 112 F.3d 1510, 1519 (11th Cir. 1997); *Gries v. Wal-Mart Stores, Inc.*, D.C. Docket No. 95-1130-Civ-ORL-18 (M.D. Fla. 1997), *aff'd.*, 162 F.3d 1177 (11th Cir. 1998). The Eleventh Circuit's holding in the present case is consistent with its prior holding in *Cagle* and *Gries*. In *Cagle*, the court unequivocally held that a plan may require a participant to sign a reimbursement and subrogation agreement before paying claims submitted by the participant. 112 F.3d at 1520; *see also Gries* (denial of benefits properly based on failure to submit required, executed reimbursement and subrogation agreement when requested). As explained in *Cagle*, the Court determined that a reimbursement and subrogation agreement is not an arbitrary interpretation of plan reimbursement and subrogation rights. *Id.* Such agreement "provides significant protection to trust assets" of the plan. 112 F.3d at 1520. As explained in *Cagle*:

> The Fund uses the subrogation agreements in negotiations with at-fault third parties. Once benefits are paid, participants and beneficiaries have little incentive (other than the fear of a lawsuit) to sign a subrogation agreement. If the Fund cannot require the agreement beforehand, it often will have to resort to lawsuits or at least the threat of lawsuits to obtain the agreements. Lawsuits cost money, sometimes a lot of it. In addition, delay becomes inevitable, and while the Fund is attempting to obtain the agreements from participants and beneficiaries, the Fund is

> hampered in its negotiations with at-fault third parties. In short, having the agreement in hand before paying benefits provides significant protection to trust assets. Cost concerns weigh in favor of the Fund's policy.

Cagle, 112 F.3d at 1520.

The District Court and Eleventh Circuit in this case properly applied *Cagle* and *Gries* and determined that Lowe failed to show that the Plan abused its discretion in denying the claim based upon his refusal to complete the required form. We could find no contrary authority in other Circuit Courts of Appeal on this issue.

2. There Is No Conflict Between the Seventh Circuit Court of Appeals And The Eleventh Circuit Court of Appeal's Decision In This Matter

Lowe contends that review is warranted because the Eleventh Circuit's decision in this case "conflicts with the Seventh Circuit's '*Bench Trial Rule*' when issues of *Subrogation, Reduction & Reimbursement* are at issue." Lowe cites the case of *Wal-Mart v. Wells*, 24 EBC 1673 (7th Cir. 2000) as support for this allegation. Pet. 11. Lowe then contends that the Eleventh Circuit's ruling below conflicts with *Wells* in that the Seventh Circuit supposedly "mandated '*Bench Trial*' on the issues of Subrogation and Reduction and Reimbursement, due to the fact that 'The Wal-Mart Plan Documents' failed to provide 'discretion' to the Plan Administrator, with regard to the foregoing issues." Pet. 26.

A review of *Wells*, however, demonstrates that Lowe's interpretation of *Wells* is incorrect. *Wells* does not even

address the issue of providing a bench trial. The issue addressed in *Wells* was whether an ERISA plan amendment that explicitly refused to pick up any part of a plan participant's attorney fees could require past recipients to reimburse the plan for benefits that the recipient received before the plan was amended. In *Wells*, the plan was seeking reimbursement of money paid to a plan participant for injuries she received in an automobile accident since she received a settlement in her personal injury action. Importantly, the *Wells* Court did not even address whether the plan could require a participant to sign a reimbursement form, which is the issue in the instant action. The Seventh Circuit in *Wells* assumed that requiring a reimbursement was permissible. Moreover, *Wells* implicitly supports the Eleventh Circuit's decision below in that it would have enforced the attorney's fee provision of the Plan had it been in the Plan document at the time of settlement. Lowe does not challenge the fact that the Plan document in effect at the time in question contained the reimbursement form requirement Accordingly, contrary to Lowe's arguments, the Seventh Circuit's *Wells* opinion supports the Respondent and fails to demonstrate any conflict between the Circuit Courts.

3. There Is No Compelling Reason For Supreme Court Review

Throughout his Petition, Lowe makes various assertions about whether ERISA is constitutional, whether his due process rights were violated by granting summary judgment, and whether ERISA properly preempts state law. For example, Lowe contends that the proceeding below "draws into question the issue of proper procedural 'Due Process of Law' to be afforded in ERISA actions for recovery of Health Care Benefits, and questions the Constitutionality of ERISA."

Pet. 2. Lowe also contends that the granting of summary judgment was a violation of due process. Pet. 21. Lowe further contends that Georgia law relating to surety, contracts, and/or trust law should be applied to this ERISA matter rather than the federal ERISA law. Pet. 15, 18, 27. In support of his position, Lowe cites the United States Constitution, the Georgia State Constitution and various Georgia codes and case law addressing general state law claims.

In response, Respondent submits that these arguments are meritless and fail to demonstrate any compelling reason for Supreme Court review. The constitutionality of ERISA has been upheld by this Court and cannot be seriously challenged. *Pilot Life v. Dedeaux*, 481 U.S. 41 (1987). With respect to preemption, ERISA specifically provides for preemption of state laws. Section 514(b) of ERISA, 29 U.S.C. sec. 1144(a), provides that the statute will "supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title [29 U.S.C. sec. 1003(a)] and not exempt under section 1003(b) of this title [29 U.S.C. sec. 1003(b)]." Where state law conflicts with ERISA, it will be preempted. *See e.g.*, *Boggs v. Boggs*, 520 U.S. 833, 117 S. Ct. 1754 (1997); *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 111 S. Ct. 478 (1990). If a state law relates to an ERISA-governed plan, it is preempted. *Pilot Life, supra*. Lowe fails to identify how any Georgia state law regarding suretyship, assignment or the "make whole" doctrine are pertinent to the instant action or how they survive preemption. (Pet. 27) Indeed, they are not pertinent. Lowe failed to sign a reimbursement form and to notify the plan of a related tort settlement. He does not and cannot show this Court any evidence of a requirement that he assign his rights against a tortfeasor. The form he

refused to sign confirmed his reimbursement obligation. With regard to the "make whole" doctrine, no reimbursement was sought to which the doctrine could be applied.

Lowe asserted a claim for benefits under ERISA. No state or federal law has been identified by Lowe which claims to govern the use of a reimbursement form. As such, there is no compelling reason for Supreme Court review.

CONCLUSION

For the foregoing reasons, the undersigned submits the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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